

without discrimination to the community they serve. Discrimination in lending is not limited to loan decisions and underwriting standards; a savings association does not meet its obligations to the community or implement its equal lending responsibility if its marketing practices and business relationships with developers and real estate brokers improperly restrict its clientele to segments of the community. A review of marketing practices could begin with an examination of an association's loan portfolio and applications to ascertain whether, in view of the demographic characteristics and credit demands of the community in which the institution is located, it is adequately serving the community on a nondiscriminatory basis. The OCC will systematically review marketing practices where evidence of discrimination in lending is discovered.

§ 128.10 Supplementary guidelines.

The policy statement found at 12 CFR 128.9 supplements this part and should be read together with this part. Refer also to the HUD Fair Housing regulations at 24 CFR parts 100 through 125, Federal Reserve Regulation B at 12 CFR part 202, and Federal Reserve Regulation C at 12 CFR part 203.

§ 128.11 Nondiscriminatory appraisal and underwriting.

(a) *Appraisal.* No savings association may use or rely upon an appraisal of a dwelling which the savings association knows, or reasonably should know, is discriminatory on the basis of the age or location of the dwelling, or is discriminatory per se or in effect under the Fair Housing Act of 1968 or the Equal Credit Opportunity Act.

(b) *Underwriting.* Each savings association shall have clearly written, nondiscriminatory loan underwriting standards, available to the public upon request, at each of its offices. Each association shall, at least annually, review its standards, and business practices implementing them, to ensure equal opportunity in lending.

NOTE TO § 128.11: See also, § 128.9(b), (c)(6), and (c)(7).

PARTS 129–132 [RESERVED]

PART 133—DISCLOSURE AND REPORTING OF CRA-RELATED AGREEMENTS

Sec.

- 133.1 Purpose and scope of this part.
- 133.2 Definition of covered agreement.
- 133.3 CRA communications.
- 133.4 Fulfillment of the CRA.
- 133.5 Related agreements considered a single agreement.
- 133.6 Disclosure of covered agreements.
- 133.7 Annual reports.
- 133.8 Release of information under FOIA.
- 133.9 Compliance provisions.
- 133.10 [Reserved]
- 133.11 Other definitions and rules of construction used in this part.

AUTHORITY: 12 U.S.C. 1462a, 1463, 1464, 1831y and 5412(b)(2)(B).

SOURCE: 76 FR 48981, Aug. 9, 2011, unless otherwise noted.

§ 133.1 Purpose and scope of this part.

(a) *General.* This part implements section 711 of the Gramm-Leach-Bliley Act (12 U.S.C. 1831y). That section requires any nongovernmental entity or person (NGEP), insured depository institution, or affiliate of an insured depository institution that enters into a covered agreement to—

- (1) Make the covered agreement available to the public and the appropriate Federal banking agency; and
- (2) File an annual report with the appropriate Federal banking agency concerning the covered agreement.

(b) *Scope of this part.* The provisions of this part apply to—

- (1) Federal savings associations and their subsidiaries;
- (2) [Reserved]
- (3) Affiliates of Federal savings associations; and

(4) NGEPs that enter into covered agreements with any company listed in paragraphs (b)(1) and (b)(2) of this section.

(c) *Relation to Community Reinvestment Act.* This part does not affect in any way the Community Reinvestment Act of 1977 (CRA) (12 U.S.C. 2901 *et seq.*), the OCC's Community Reinvestment rule at 12 CFR part 195, or the OCC's interpretations or administration of the CRA or Community Reinvestment rule.

(d) *Examples.* (1) The examples in this part are not exclusive. Compliance

§ 133.2

12 CFR Ch. I (1–12 Edition)

with an example, to the extent applicable, constitutes compliance with this part.

(2) Examples in a paragraph illustrate only the issue described in the paragraph and do not illustrate any other issues that may arise in this part.

§ 133.2 Definition of covered agreement.

(a) *General definition of covered agreement.* A covered agreement is any contract, arrangement, or understanding that meets all of the following criteria—

(1) The agreement is in writing.

(2) The parties to the agreement include—

(i) One or more insured depository institutions or affiliates of an insured depository institution; and

(ii) One or more NGEPS.

(3) The agreement provides for the insured depository institution or any affiliate to—

(i) Provide to one or more individuals or entities (whether or not parties to the agreement) cash payments, grants, or other consideration (except loans) that have an aggregate value of more than \$10,000 in any calendar year; or

(ii) Make to one or more individuals or entities (whether or not parties to the agreement) loans that have an aggregate principal amount of more than \$50,000 in any calendar year.

(4) The agreement is made pursuant to, or in connection with, the fulfillment of the CRA, as defined in § 133.4 of this part.

(5) The agreement is with a NGEF that has had a CRA communication as described in § 133.3 of this part prior to entering into the agreement.

(b) *Examples concerning written arrangements or understandings—*(1) *Example 1.* A NGEF meets with an insured depository institution and states that the institution needs to make more community development investments in the NGEF's community. The NGEF and insured depository institution do not reach an agreement concerning the community development investments the institution should make in the community, and the parties do not reach any mutual arrangement or understanding. Two weeks later, the in-

stitution unilaterally issues a press release announcing that it has established a general goal of making \$100 million of community development grants in low- and moderate-income neighborhoods served by the insured depository institution over the next 5 years. The NGEF is not identified in the press release. The press release is not a written arrangement or understanding.

(2) *Example 2.* A NGEF meets with an insured depository institution and states that the institution needs to offer new loan programs in the NGEF's community. The NGEF and the insured depository institution reach a mutual arrangement or understanding that the institution will provide additional loans in the NGEF's community. The institution tells the NGEF that it will issue a press release announcing the program. Later, the insured depository institution issues a press release announcing the loan program. The press release incorporates the key terms of the understanding reached between the NGEF and the insured depository institution. The written press release reflects the mutual arrangement or understanding of the NGEF and the insured depository institution and is, therefore, a written arrangement or understanding.

(3) *Example 3.* An NGEF sends a letter to an insured depository institution requesting that the institution provide a \$15,000 grant to the NGEF. The insured depository institution responds in writing and agrees to provide the grant in connection with its annual grant program. The exchange of letters constitutes a written arrangement or understanding.

(c) *Loan agreements that are not covered agreements.* A covered agreement does not include—

(1) Any individual loan that is secured by real estate; or

(2) Any specific contract or commitment for a loan or extension of credit to an individual, business, farm, or other entity, or group of such individuals or entities, if—

(i) The funds are loaned at rates that are not substantially below market rates; and

(ii) The loan application or other loan documentation does not indicate